



July 24, 2002

Ms. Allyson Mitchell  
Assistant Criminal District Attorney  
Anderson County  
500 North Church Street  
Palestine, Texas 75801

OR2002-4058

Dear Ms. Mitchell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166107.

The Anderson County Sheriff's Department (the "department") received a request for "the work schedules and time and attendance reports for all who may report, come and go to or from the jail on April 24, 2002, from 9:00 a.m. through 6:00 p.m." for the following individuals:

1. Jailers;
2. Deputy sheriffs;
3. Office personnel;
4. Cooks;
5. Investigators;
6. All county jail employees from the sheriff and under;
7. Contractors;
8. Volunteers;
9. Visitors;
10. Bail bondsmen;
11. Attorneys;
12. Judges;
13. Texas rangers;
14. Highway patrol;
15. Any police department;
16. Any military personnel; and
17. Any other recorded entrances to the jail.

You state that the department does not have information responsive to categories three, four, six, seven, eight, and ten through seventeen of the request. We note that the Public Information Act does not require the department to disclose information that did not exist at the time the request was received or to create responsive information. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). You claim that categories one, two, five, and nine are excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered the comments submitted to this office by the requestor. See Government Code § 552.304 (providing for submission of public comments).

In regard to categories one, two, and five of the request for information, you claim section 552.108. Section 552.108(b)(1) of the Government Code excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." Generally, a governmental body claiming section 552.108(b)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You contend that the sheriff creates the requested rotating work schedules to provide law enforcement for Anderson County and that the schedules indicate when and where the jailers, deputies, and investigators are working. You also contend that this information, if released, would "permit people to know the level of protection at any given time in the county and at the jail," and "will raise security issues for the Sheriff's Department." Having reviewed your arguments and the submitted information, we agree that the release of these schedules, Exhibits B1 and B2, would interfere with law enforcement or crime prevention. Accordingly, the department may withhold the schedules responsive to categories one, two, and five of the request from disclosure under section 552.108(b)(1) of the Government Code.<sup>1</sup>

In regard to category nine of the request for information, you claim section 552.101. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the right to privacy. The constitutional right to privacy protects two interests. Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), cert. denied, 474 U.S. 1062 (1986)). The first is the interest in

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<sup>1</sup>As we are able to make this determination, we need not address your argument under section 552.103 of the Government Code.

independence in making certain important decisions related to the “zones of privacy” recognized by the United States Supreme Court. Open Records Decision No. 600 at 4 (1992). The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.*

The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual’s privacy interests against the public’s need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the “most intimate aspects of human affairs.” *See* Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

The visitation record is excepted from disclosure under section 552.101. In Open Records Decision Nos. 428 (1985) and 430 (1985), we concluded that inmate visitor and mail logs which identify inmates and those who choose to visit or correspond with inmates are protected by constitutional law. Thus, the department must withhold the responsive visitor records in Exhibit C from disclosure pursuant to section 552.101 of the Government Code.<sup>2</sup>

In summary, we conclude that: 1) the department may withhold the schedules responsive to categories one, two, and five of the request for information from disclosure under section 552.108 of the Government Code; and 2) the department must withhold the visitor records responsive to category nine of the request from disclosure pursuant to section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

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<sup>2</sup>As we are able to make this determination, we need not address your argument under section 552.130 of the Government Code.

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/sdk

Ref: ID# 166107

Enc: Submitted documents

c: Mr. Gerald Moore  
The Clarion  
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(w/o enclosures)